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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0605; FRL-9487-2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Pennsylvania Clean Vehicles Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This SIP revision contains Pennsylvania's Clean Vehicle Program, which adopts California's second generation low emission vehicle program for light-duty vehicles (LEV II). The Clean Air Act (CAA) contains specific authority allowing any state to adopt new motor vehicle emissions standards that are identical to California's standards in lieu of applicable Federal standards. Pennsylvania has adopted a Clean Vehicle Program that incorporates by reference provisions of California's LEV II rules and specifies a transition mechanism for compliance with these clean vehicle standards in Pennsylvania. The intended effect of this action is to approve, consistent with the CAA, a control strategy that will help Pennsylvania to achieve and maintain attainment of the National Ambient Air Quality Standard (NAAQS) for ozone.

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2011-0605** by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: fernandez.cristina@epa.gov
- C. Mail: EPA-R03-OAR-2011-0605, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2011-0605**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special

characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814-2176, or by e-mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On May 31, 2007, the Commonwealth of Pennsylvania submitted a revision to its SIP for the Pennsylvania Clean Vehicles Program.

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I. Description of Pennsylvania's Clean Vehicle Program SIP Revision

A. Pennsylvania and the Ozone NAAQS

Under the Clean Air Act (CAA) Amendments of 1990, Pennsylvania had thirty-three counties designated nonattainment under the former 1-hour ozone NAAQS. These thirty-three counties were divided into twenty-four separate nonattainment areas, with ozone attainment deadlines varying by area. There were twelve additional Pennsylvania counties that were designated nonattainment, but that had incomplete monitoring data to classify them under the former 1-hour ozone standard. Of the twenty-four 1-hour ozone NAAQS nonattainment areas (with classifications ranging from marginal to severe-15), two were redesignated to attainment prior to

the revocation of the 1-hour ozone standard on June 15, 2005, per 40 CFR 50.9(b).

On June 15, 2004, thirty-seven counties in Pennsylvania were designated nonattainment with respect to the 1997 8-hour ozone NAAQS, and classified as part of seventeen separate nonattainment areas. Of these, all but two of these areas have been redesignated to attainment and are currently maintenance areas. The exceptions are the Pittsburgh and the multi-state Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas, which continue to be nonattainment.

B. Background on Pennsylvania's Clean Vehicle Program

1. Pennsylvania's 1998 Clean Vehicle Program Rule and NLEV Opt-In SIP Revision

The Commonwealth adopted emissions control measures to address the ozone NAAQS, one of which was the NLEV program. The NLEV program was a voluntary framework agreement between EPA, vehicle manufacturers, and the states. In 1998, EPA adopted an NLEV rule to formalize this agreement whereby vehicle manufacturers would comply with a 49-state standard that was more stringent than the federal motor vehicle standards that were in effect at that time (referred to as the Tier 1 standards). NLEV took effect only after all auto manufacturers and a sufficient number of states opted to participate, upon which time EPA issued a finding that the NLEV program was in effect on March 2, 1998 (63 FR 11374).

Pennsylvania, and eight other Northeast Ozone Transport Commission (OTC) states that opted to participate in the NLEV program, subsequently formalized their participation in the NLEV

program by submitting NLEV program “opt-in” SIPs to EPA.

Pennsylvania adopted the NLEV program as part of its Clean Vehicle Program rule on December 5, 1998 (28 Pa.B. 5873). Under Pennsylvania’s December 1998 Clean Vehicle Program rule, the Commonwealth adopted California’s Low Emission Vehicle Program (California LEV) under the authority of section 177 of the CAA. This CAA provision allows states to adopt vehicle emissions standards identical to California’s, provided EPA has granted California a waiver for those standards and that the state adopting California’s standards provides at least two years lead time before the model year the standards take effect.

Pennsylvania’s Clean Vehicle Program rule incorporated by reference California’s first generation Low Emission Vehicle (LEV) program, but allowed NLEV to serve as a compliance alternative to the California LEV program.

Pennsylvania’s December 1998 Clean Vehicle Program rule incorporated by reference California’s first generation LEV standards (adopted by California in 1991, and also known as LEV I standards) for passenger cars and light trucks, but did not incorporate by reference California’s Zero Emission Vehicle (ZEV) provisions or emissions control warranty systems statement provisions.

Pennsylvania submitted its Clean Vehicle Program (adopted in 1998) as an NLEV opt-in SIP submitted to EPA on January 8, 1999. EPA had granted a Federal preemption waiver to California for its LEV I standards on January 13, 1993 (58 FR 4166). EPA issued a direct final rule to approve that Pennsylvania Clean Vehicle Program SIP revision on December 28, 1999

(64 FR 72564).

The NLEV program, under the framework established in EPA's NLEV final rule, extended until model year 2006, unless EPA issued more stringent federal standards under the CAA. Since EPA issued more stringent Tier 2 Federal vehicle emission standards on February 10, 2000 (65 FR 6698), which were in effect beginning with the 2004 model year. Per the NLEV framework, Federal Tier 2 standards superseded NLEV standards in model year 2004 – for those states that had not opted into the California LEV program under the authority of section 177 of the CAA. California also revised its LEV Program rules in 1996, with a second generation program referred to as LEV II, effective on model year 2004 and newer California cars. EPA granted a Federal preemption waiver for California's LEV II program on April 22, 2003 (68 FR 19811).

2. Pennsylvania's 2007 Clean Vehicle Program SIP Revision

Pennsylvania adopted its revised Clean Vehicles Program rule and published it as a final rule in December 9, 2006 edition of the Pennsylvania Bulletin (36 Pa.B. 7424).

On May 31, 2007, Pennsylvania submitted a SIP revision to EPA seeking Federal approval of its revised Clean Vehicle Program.

Pennsylvania's revised Clean Vehicle Program rule was meant to formalize the cessation of the NLEV program, to delay the start date for the Pennsylvania Clean Vehicle Program from model year 2006 to model year 2008, to make changes to the Clean Vehicle Program to reflect post-1998 changes made by California to their program (since Pennsylvania first adopted California's

LEV program by reference), and to specify a 3-year early credit earning period within which vehicle manufacturers could comply with the program's fleet average non-methane organic gases (NMOG) requirements.

Specifically, Pennsylvania's revised Clean Vehicle Program final rule made the following changes:

- (a) amended section 126.412(a) to postpone the date by which subject Pennsylvania vehicles must comply with the California Air Resources Board (CARB) certification to model year 2008);
- (b) amended section 126.412(b) to change the first model year for which compliance by manufacturers with the NMOG fleetwide average is required to model year 2008;
- (c) removed reference in section 126.412(d) to continue the exclusion of the California ZEV program from the prior Pennsylvania Clean Vehicles Program, since CARB moved those ZEV provisions from the section of California's rule previously referenced therein;
- (d) deleted provisions in chapter 126 related to the cessation of the NLEV program;
- (e) added and removed several definitions in chapter 121 to reference the California LEV program rather than the NLEV program, due to cessation of the NLEV program;
- (f) revised section 126.411(a) to include vehicles titled in the Commonwealth, rather than those offered for sale, lease, import, rented, delivered, purchased, acquired, or registered in the Commonwealth.
- (g) revised section 126.411 to update cross-references to reflect changes made by California to its LEV rule with respect to California's ZEV program, in order to continue to exclude California's ZEV program from Pennsylvania's Clean Vehicle Program;

(h) revised section 126.412(d) to specify a 3-year early-credit earning period (between model year 2008 to 2010) within which manufacturers were to comply with the NMOG fleet average;

(i) revised section 126.413(a)(2) to allow a vehicle dealer to transfer a non-CARB certified new vehicle as long as the vehicle will not ultimately be sold in Pennsylvania as a new vehicle;

(j) revised section 126.413(a)(6) to add clarification language regarding applicability (in accordance with the rules of the International Registration Plan) to vehicles “held for daily lease or rental to the general public which are registered and principally operated outside the Commonwealth;”

(k) revised section 126.413(a)(11) to conform the model year cutoff for compliance with the program to the model year 2008 program start date for CARB certification and NMOG fleet average requirements;

(l) added paragraph 13 to section 126.413(a) to exempt vehicles transferred for the purpose of salvage, to allow salvage operations in Pennsylvania to accept salvaged new motor vehicles that do not have CARB certification;

(m) revised section 126.413(b) to require a person seeking to title or register an exempted vehicle to provide satisfactory evidence that the exemption is applicable;

(n) revised sections 126.421(b), 126.422(b), 126.423(b), 126.424(b), and 126.425(b), with respect to new motor vehicle testing provisions, to require vehicle manufacturers to provide CARB testing determinations and findings to the Pennsylvania Department of Environmental Protection (PA DEP) upon request;

(o) revised section 126.431(b) to allow a vehicle manufacturer to submit to the PA DEP (when requested in writing) copies of the reports the manufacturer submitted to CARB for purposes of

compliance with respect to this subsection of Pennsylvania's rule;

(p) added paragraph (c) to section 126.431 to clarify that any voluntary or influenced emissions-related recall campaign initiated by a vehicle manufacturer under California's LEV program shall extend to vehicles covered by the Pennsylvania Clean Vehicle Program, except where the manufacturer demonstrates to the satisfaction of PA DEP in writing (within 30 days of CARB's approval of the campaign) that said campaign is not applicable to vehicles sold in Pennsylvania;

(q) added paragraph (d) to section 126.432 providing that recalls prompted by a CARB order or an enforcement action taken by CARB to correct noncompliance by a vehicle manufacturer shall extend to vehicles covered by the Pennsylvania Clean Vehicles Program, except where the manufacturer demonstrates to the satisfaction of PA DEP in writing (within 30 days of CARB's approval of the campaign) that said campaign is not applicable to vehicles sold in Pennsylvania;

(r) revised section 126.432(a), changing the start date (to model year 2008) when each vehicle manufacturer must begin to submit to the PA DEP an annual report on vehicle deliveries of each "test group" for the latest model year;

(s) revised section 126.441 restating the prohibition on new vehicle dealers from selling, offering for sale or lease, or delivering a vehicle subject to Pennsylvania's program unless it has received the requisite CARB certification; and

(t) added section 126.451 requiring the PA DEP to monitor CARB rulemaking actions on the California LEV program, to submit comments on such CARB rulemakings, and to apprise the Pennsylvania Environmental Quality Board of proposed changes to California's LEV program.

C. What are the Relevant EPA and CAA Requirements?

Section 209(a) of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, under section 209(b) of the CAA, EPA may grant a waiver of the section 209(a) prohibition to any state that adopted its own vehicle emission standards prior to March 30, 1966. As California is the only state to meet this test, California is thereby granted authority under this section to adopt its own motor vehicle emissions standards. Section 209(b) of the CAA requires California to show that its newly adopted standards will be “...in the aggregate, at least as protective of public health and welfare as applicable Federal standards....” Section 209(b) further provides that EPA will grant a waiver to California for such standards unless it finds that: (1) the State’s determination is “arbitrary and capricious,” (2) the State “does not need such State standards to meet compelling and extraordinary conditions,” or (3) the State’s standards and accompanying enforcement procedures are “not consistent” with CAA section 202(a).

Section 177 of the CAA allows other states to adopt and enforce California’s standards relating to the control of emissions from new motor vehicles, provided that, among other things, such state standards are identical to the California standards for which a waiver has been granted under CAA section 209(b). In addition, section 177 of the CAA requires that a state choosing to adopt California standards must do so at least two years prior to the commencement of the model year to which the standards will apply. Pennsylvania has met the requirements of section 177.

D. What is the California LEV II Program and How Does it Relate to Pennsylvania’s Clean Vehicle Program?

1. California's Low Emission Vehicle Program

CARB adopted the first generation LEV I regulations in 1990, which were effective through the 2003 model year. CARB adopted California's second generation LEV II regulations in August 1999. On February 10, 2000, EPA adopted its Tier 2 Federal motor vehicle standards rule (65 FR 6698). In December 2000, CARB modified the LEV II program to take advantage of some elements of the Federal Tier 2 regulations to ensure that only the cleanest vehicle models would continue to be sold in California. EPA granted California a waiver for its LEV II program on April 22, 2003 (68 FR 19811).

In 2006, CARB adopted technical amendments to its LEV II program that amend the evaporative emission test procedures, onboard refueling vapor recovery and spitback test procedures, exhaust emission test procedures, and vehicle emission control label requirements. These technical amendments align each of California's test procedures and label requirements with its Federal counterpart, in an effort to streamline and harmonize the California and Federal programs and to reduce manufacturer testing burdens and increase in-use compliance. On July 30, 2010, EPA published a notice in the Federal Register confirming that CARB's 2006 technical amendments are within-the-scope of existing waivers of preemption for CARB's LEV II program.

Under California's LEV II program, each vehicle manufacturer must show that their overall fleet for a given model year meets the specified phase-in requirements according to the fleet average non-methane hydrocarbon requirement for that year. The fleet average non-methane hydrocarbon emission limits become progressively lower each model year. The LEV II program

requires auto manufactures to include a "smog index" label on each vehicle sold, which is intended to inform consumers about the amount of pollution coming from that vehicle relative to other vehicles.

In addition to the LEV II requirements, California requires that minimum percentages of passenger cars and the lightest light-duty trucks marketed in California by a large or intermediate volume manufacturer to be ZEVs, referred to as a ZEV mandate. Pennsylvania did not incorporate California's ZEV provisions into the Pennsylvania Clean Vehicle Program. EPA concluded in its OTC LEV Program for the Northeast Transport Region final rule, published in the January 24, 1995 Federal Register (60 FR 4712), that states adopting a CAA section 177 program need not adopt California's ZEV requirements to comply with the CAA requirements under section 177 for identical standards. Section 177 of the CAA does not require adoption of all California LEV program standards. However, if a state adopts California vehicle standards, those standards must be identical to California standards for which California has been granted a waiver of preemption by EPA.

2. California and Federal Greenhouse Gas Standards

On October 15, 2005, California amended its rules to add regulatory provisions for greenhouse gas related emissions from new cars and trucks. Specifically, California's greenhouse gas standards require manufacturers to comply with fleet average emission standards for emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride on new passenger cars, light-duty trucks, and medium-duty passenger vehicles sold in California. California approved regulations to reduce greenhouse gas emissions from

passenger vehicles in September 2004, effective beginning with model year 2009. CARB adopted a new approach, combining for the first time the control of smog-causing pollutants and greenhouse gas emissions into a single coordinated package of standards. After initially denying California's request for a waiver of CAA preemption, EPA later granted California the authority to implement greenhouse gas emission reduction standards in a waiver published in the July 8, 2009 edition of the Federal Register (74 FR 32744).

EPA and the National Highway Traffic Safety Administration (NHTSA) subsequently issued a joint final rule in the May 7, 2010 Federal Register (75 FR 25324) establishing a national program for greenhouse gas standards and improved fuel economy for model year 2012 to 2016 light-duty vehicles, coupled with improved fuel economy. This joint rule stemmed from a National Fuel Economy Policy announced by President Obama on May 19, 2009. The joint rule represents a harmonized approach, allowing automobile manufacturers to build a single light-duty national fleet.

On September 24, 2009, CARB adopted amendments to its passenger vehicles greenhouse gas standards (for model year 2009 through 2016 vehicles) to harmonize Federal and California greenhouse gas rules and to provide vehicle manufacturers with new compliance flexibility. CARB will now also allow California and other states that have adopted California's greenhouse gas standard to pool car sales for purposes of compliance, rather than on a state-by-state basis for compliance. This was the final step in an agreement between the EPA and NHTSA, California, and the automobile manufacturers, fulfilling President Obama's May 19, 2009 announcement.

Pennsylvania's Clean Vehicle Program rule adopts by reference CARB's greenhouse light-duty vehicle emissions standard provisions set forth in Title 13 California Code of Regulations (CCR), Division 3, Chapter 1. Under Pennsylvania's Clean Vehicle Rule, a manufacturer or dealer is deemed compliant if a vehicle offered for sale in Pennsylvania is CARB-certified and is properly labeled as such.

E. What is the History and Current Content of the Pennsylvania Clean Vehicle Program?

On December 5, 1998 (28 Pa.B. 5873), Pennsylvania adopted the Pennsylvania Clean Vehicles Program, which incorporated California's LEV program by reference. The December 1998 rule adopted NLEV as a compliance alternative to the Pennsylvania Clean Vehicles Program (for the duration of the NLEV program).

The NLEV program was a voluntary agreement between EPA, vehicle manufacturers, and the states to introduce vehicles that met emission standards that were more stringent than the Federal Tier 1 standards in effect at the time. The NLEV program only took effect after all auto manufacturers and a sufficient number of states voluntarily "opted-in" to the program. Once the opt-ins were complete, EPA made a NLEV in-effect finding on March 2, 1998 (63 FR 11374). Participating Northeast states then submitted SIP revisions to ensure continuation of the program. Pennsylvania submitted its NLEV SIP revision on January 8, 1999. EPA issued a direct final rule to approve Pennsylvania's NLEV program (with the Pennsylvania Clean Vehicles Program as a backstop to NLEV) on December 28, 1999 (64 FR 72564).

On December 9, 2006, Pennsylvania amended its Clean Vehicles Program to be identical to update its rule to reflect California's LEV II program; to postpone compliance with California LEV II provisions of the rule from model year 2006 to model year 2008; to make clarifications and updates to Pennsylvania's Clean Vehicles Program; and to specify a transition mechanism to the California LEV provisions. Pennsylvania has adopted California's LEV II program by incorporating by reference portions of the California LEV II regulations (i.e., Title 13 California Code of Regulations, Division 3, Chapters 1 and 2) into the Pennsylvania Code.

Pennsylvania submitted a SIP revision to EPA requesting that EPA approve Pennsylvania's Clean Vehicle Program regulations as part of the Pennsylvania SIP. EPA's approval would make the program Federally enforceable through the SIP.

II. Proposed EPA Action

EPA is proposing to approve the Pennsylvania Clean Vehicle Program SIP revision, which was submitted on May 31, 2007. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR section 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to

approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve the Pennsylvania Clean Vehicle Program as part of the Pennsylvania SIP does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: October 25, 2011

W. C. Early, Acting
Regional Administrator,
Region III.

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